IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 192 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHBHAI ALIAS BABULAL CHHOTALAL HAZARIWALA

Versus

NIROOBEN ALIAS JASVANTIBEN BABULAL ALIAS RAMESHBHAI

Appearance:

1. Special Criminal Application No. 192 of 2003

MR RAJESH K SHAH for Petitioner No. 1

RULE SERVED for Respondent No. 1-3

MR V M Pancholi, APP for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 30/07/2003

ORAL JUDGEMENT

The petitioner has preferred this petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') for quashing and setting aside the judgment and order recorded by the learned Sessions Judge, Navsari dated 17.1.2003 in criminal revision application no.76 of 2002 which he seems to have taken suo motu in revision. It seems that respondents no. 1, 2 and 3 had obtained an order from the trial court for maintenance under section 125 of the said Code. The order was to the effect that the two minor sons will get Rs. 150/- p.m. each and the wife would get Rs. 300/per month by way of maintenance under section 125 of the Code. Since the petitioner was in default, the contesting respondents preferred application before the trial court for implementation of the said order. The trial court appears to have passed an order that the minors have become major and, therefore, they would not be entitled to receive any amount of maintenance and, therefore, their application was turned down by the trial court on the said ground. The said order was passed on 13.9.2002. The learned Sessions Judge took the matter in revision suo motu as aforesaid and directed that the revision be allowed and the order dated 13.9.2002 be quashed and set aside and the trial court should reconsider the case and the present petitioner be given two months' time for depositing the amount in question. Feeling aggrieved by the aforesaid order, the petitioner preferred this petition before this court.

2. Rule was issued. The contesting respondents have not appeared. The State was represented by Mr V M Pancholi, learned APP. Learned Advocate for the petitioner has contended that the contesting respondents could not have applied for maintenance for exceeding 12 months. For this purpose, learned Advocate for the petitioner has relied upon the provisions made in sub-section (3) of section 125. The said provision shows that warrant may not be issued for arrears of maintenance exceeding 12 months unless application be made to the court to levy such amount within a period of one year from the date on which it became due. Any way, there is no dispute that the maintenane was due for more than 12 months and, therefore, @ Rs.300/- per month the petitioner was responsible to pay Rs.3,600/- to the contesting respondents by way of maintenance. So far as the sons are concerned, it is a matter of record of the trial court as well as this Court that they are major and, therefore, the major sons would not get maintenance. This can be gathered from Section 125 itself. Technically speaking the present petitioner should have

filed application for cancellation of the order as soon as the sons have attained majority. However, it has become a matter of fact, on the strength of the record of the trial court as well as on the strength of the records of this court that the sons are major and, therefore, they would not be entitled for maintenance under section 125 of the Code. In above view of the matter, this petition is required to be partly allowed and so far as the maintenance granted to the wife is concerned, it is required to be confirmed. However, so far as the sons are concerned, the petition is required to be allowed and the order of the learned Sessions Judge is required to be quashed and set aside.

3. For the foregoing reasons, this petition is partly allowed. The maintenance awarded to the two sons respondents no.1 and 2 by the learned Sessions Judge is set aside. So far as the order of the learned Sessions Judge awarding the maintenance to the third respondent Rs.300/- for a period of 12 months is concerned, the same is confirmed. Rule is made absolute to the above extent. It has been stated at the Bar by the learned Advocate for he petitioner that the petitioner has already deposited an amount of Rs.5000/- before the trial court including cost maintenance and Rs.500/-. The trial court will be at liberty to adjust the said amount against the dues of the respondent-wife.

Rule made absolute to the extent indicated hereinabove.

[D P Buch, J.]
msp